

Questions for Governor Barbour and Governor Manchin for “Conversations With”

What is the nature of the legal reforms that you proposed in Mississippi?

All were reforms most of us would view as just plain common sense – to allow affordable medical malpractice insurance for healthcare providers, to promote job creation, industry expansion and a business-friendly climate in Mississippi. Reforms included improving the areas of joinder and venue, placing caps on non-economic damages at \$1 million, and revising the punitive damages cap.

What were the circumstances in Mississippi that caused you to propose the reforms?

It was highly publicized that Mississippi was known for “Jackpot Justice.” The state had long been regarded as a “judicial hellhole” where an unfair civil justice system had become a real threat to economic development and job creation. To add insult to injury, we were given a 50th ranking by the U.S. Chamber of Commerce for a fair legal climate three years in a row.

We had to change this reputation in order to achieve maximum success in job creation. Lawsuit abuse was draining Mississippi’s economy and hampering job creation efforts, not to mention increasing the cost and threatening quality and access to healthcare. Unacceptably high liability insurance rates were forcing doctors to close their practices. Every small business seemed one lawsuit away from bankruptcy. Frivolous lawsuits caused doctors to leave the state and hospitals to lose insurance. Obstetric wards were closing and neurosurgeons had stopped performing emergency surgery.

What steps did you take to build public support for the reforms you proposed?

I partnered with an aggressive coalition of doctors and other healthcare professionals, business leaders, lawmakers, community leaders, manufacturers, the financial services sector and groups like Stop Lawsuit Abuse and Mississippians for Economic Progress. We worked with Mississippians for Economic Progress to survey voters on the issue, and found that the public clearly realized our legal system needed reforms. Collectively these groups built a powerful case for civil justice reform. They pressed the legislature with phone calls,

letters and gathered for numerous rallies to put an end to lawsuit abuse.

What was the nature of the coalition you put together among legislators that led to the passage of your reforms?

There was strong support from the Lieutenant Governor and the majority of the Senate as well as 60 House members – all of whom sponsored the bill. After some initial hesitation at the behest of the trial lawyers lobby, the majority of lawmakers embraced a comprehensive tort reform bill, which overwhelmingly passed both houses. Legal reform was also an issue on which I and other candidates campaigned in 2003, and we were eager and ready to make constructive changes.

Were there compromises that you needed to make along the way that proved crucial to passage of your reforms?

The Speaker of the House and the chairman of the House Judiciary Committee bottled up the bill and the Legislature did not pass the measure during the Regular Session. I called a Special Session to deal solely with tort reform. At that point, even lawmakers who were not originally supporters were willing to get on board.

How long did the process take?

More than three years; the process actually started before I took office and some weaker reforms were passed. In January 2004 I was sworn in as Governor and we really got down to business.

Do you think you could have gained legislative approval without the support of the business community? What role did the business community play in supporting your reforms and how important was this support to passage?

No, we could have not done this without the support of the business community, and I'm talking about businesspeople in companies of all sizes from across the spectrum. They all were absolutely key. They better than anyone understood that lawsuit abuse drove up the costs of doing business in Mississippi to intolerably high levels, and every small business understood that they were one lawsuit away from bankruptcy.

What recognition has the Tort Reform Act of 2004 received?

In October 2004, I was proud to accept the State Legislative Award from the U.S. Chamber of Commerce Institute for Legal Reform on behalf of those who worked so hard on the passage of meaningful tort reform.

The Wall Street Journal called the reform “one of the most comprehensive legal reforms in the nation.”

And, as I travel around Mississippi I see that our medical system is intact again. Doctors are practicing medicine, not having to defend frivolous lawsuits; in fact, medical liability cases have dropped by 90 percent since reforms went into effect, and patients are getting better care.

In what ways have these benefits been realized?

Fraudulent cases are being thrown out of court and prosecutors are finally pursuing defendants who collect money based on fraudulent claims. “Jackpot Justice” doesn’t have a home in Mississippi anymore.

Before Tort Reform, the Toyota Motor Company said Mississippi’s legal climate was one of the reasons the automotive manufacturer decided not to locate an assembly plant in Mississippi. But earlier this year Toyota announced its selection of a 1,700-acre site in north Mississippi to build its eighth North American vehicle assembly plant. That plant is now under construction and it would not have happened without real tort reform. We changed the judicial landscape to the point where it is a help not a hindrance. A state’s legal environment is directly related to job creation. I am happy to report that the Toyota plant will employ 2,000 and start production of its Highlander model in 2010.

What are the benefits that have been realized by consumers in Mississippi?

The day I signed the tort reform into law, MassMutual Financial Group, a nationwide life insurance company, announced it was re-entering the Mississippi market due to the passage of this legislation. Examples like that speak for themselves.

A year after this legislation was passed and before Hurricane Katrina devastated our coast and reversed this trend, we saw decreases in general liability rates, homeowner’s insurance rates, automobile insurance rates, and property insurance rates.

On the medical liability front, there have been three reductions in medical liability insurance rates by the largest insurer of doctors in Mississippi, concrete evidence that tort reform is working. Rates were reduced across the board by 10 percent for 2007, which came after a reduction in renewal rates for 2006 by 5 percent, and a retroactive refund of up to 15 percent on 2005 premiums.

What are the benefits that have been realized by small businesses in Mississippi?

The U.S. Chamber of Commerce and associated pro-business groups are now acknowledging that our new law is changing not only the poor rankings and reputation, but also the very climate for job growth and business expansion. Small business owners constantly tell me they have a better handle on costs because they have less fear of frivolous lawsuits. That's huge, no matter what product or service your company offers.

Now that the reforms have been in place for several years, as you look back at the process that you directed to achieve these reforms, what lessons have you learned that might be useful for other government leaders who may be contemplating similar reforms?

It took an army of aggressive supporters to push this legislation through. My main message would be to develop a plan, engage all partners, build public support and follow through, no matter what. States beginning to look at tort reform will face a rich, loud, bullying lobby in trial lawyers, but you can be confident that, with a lot of work, common sense and the common good can triumph over selfish special interests. A fair legal climate is one of the vital fundamentals for job creation. In Mississippi the early returns are good and I expect them to get better.